

1 Adopt 2 Cal. Code Regs., Section 18360.1 to read:

2 **§ 18360.1. Eligibility Requirements and Considerations - Streamline and Warning Letters.**

3 The Chief of Enforcement may include or exclude any filer from receiving a streamline
4 penalty based upon mitigating or aggravating circumstances. Mitigating circumstances result in
5 consideration of a Warning Letter being issued instead of a Streamline penalty. Aggravating
6 circumstances result in the consideration of a Mainline Stipulation instead of a Streamline
7 penalty. A Mainline Stipulation generally results in a higher penalty and includes a full
8 description of the violation and surrounding events.

9 (a) Types of Violations Eligible.

10 (1) Late Statements and Reports, including Campaign, Statement of Economic Interests,
11 and Lobbying.

12 (2) Unreported Economic Interest(s) on a Statement of Economic Interests.

13 (3) Unreported Lobbying Activity, Contributions or Expenditures.

14 (4) Cash Contribution(s) or Expenditure(s) of \$100 or more.

15 (5) Campaign Bank Account.

16 (6) Committee Naming.

17 (7) Advertising and Mass Mailing Disclosures.

18 (8) Recordkeeping.

19 (9) Gift Limit.

20 (10) Slate Mailer Organization Filing Issues.

21 (11) Proper Recusal of a Conflict of Interest.

22 (12) Major Donor Notifications.

1 (b) Penalty Amount. The streamline penalty for each violation is found in Regulation
2 18360.2.

3 (c) General Requirements for Eligibility, Considerations, Factors, and Exclusions.

4 (1) General Eligibility Requirements:

5 (A) Sign and submit to the Commission a streamline stipulation, decision, and order on a
6 form provided by the Commission, and

7 (B) Pay a proposed penalty by cashier's check, electronic payment, or money order in an
8 amount as determined in Regulation 18360.2.

9 (2) Considerations and Factors.

10 (A) Considerations for a Warning Letter include a balancing of the following factors:

11 (i) Low level of experience and sophistication of the party.

12 (ii) Self-reported violations before public discovery.

13 (iii) Violations resulted in minimal public harm.

14 (iv) Low amount raised and spent regarding the election.

15 (v) Unsuccessful.

16 (vi) Filer or candidate leaving office or never having obtained office.

17 (vii) Illness, incapacitation, death, or otherwise unable to perform duties.

18 (viii) Low activity during the missing or late reporting period.

19 (ix) Small percentage of overall activity for reporting period.

20 (x) Committee has terminated.

21 (xi) Fraudulent activity of other caused the violation.

22 (xii) Activity was reported by other participant in the transaction.

23 (xiii) Activity was reported timely on another campaign statement of the filer.

1 (xiv) For late statements and reports, activity was unrelated to election that triggered
2 filing requirements.

3 (xv) The same candidate, committee, or principal officer has not been issued a Warning
4 Letter for the same type of violation within the last five years.

5 (B) Exclusions from the Streamline Program include:

6 (i) Any evidence of an intent to conceal or violate the Political Reform Act or regulations
7 relating to the Act.

8 (ii) Presented the FPPC false or altered evidence.

9 (iii) Made false statements to the FPPC regarding material facts.

10 (iv) Intentional interference with a witness in the FPPC matter.

11 (v) The same candidate, committee, or principal officer has not paid a prior penalty to the
12 Commission for the same type of violation occurring within the last five years.

13 (vi) For late statements and reports, history of not timely filing statements or reports.

14 (vii) Violations caused in the aggregate more than minimal public harm.

15 (viii) Has other violations under review for prosecution that do not qualify for a
16 streamline penalty.

17 (d) Specific Requirements for Eligibility.

18 (1) Late Statements and Reports. To enter into a streamline settlement, an individual who
19 failed to timely file a campaign statement or report, lobbying report, or Statement of Economic
20 Interests must file the late statement or report with the appropriate agency unless the relevant
21 information was reported by the person elsewhere or the FPPC determines that the information
22 has been sufficiently disclosed in the stipulation and/or other filings.

23 (A) Statement of Economic Interests - Considerations and Factors.

1 (i) Considerations for a Warning Letter include:

2 a. The late filed Statement of Economic Interests is a Leaving Office Statement.

3 b. The late filed Statements of Economic Interests are the Leaving Office Statement and
4 the Annual Statement that was due within three months of the date the public official left office.

5 (ii) Exclusions from the Streamline Program include:

6 a. For Statement of Economic Interests reporting violations, public official also had a
7 conflict of interest violation under Sections 1090 or 87100 involving the undisclosed economic
8 interest.

9 (B) Campaign Statement or Report - Considerations and Factors.

10 (i) Considerations for a Warning Letter include:

11 a. The committee had less than \$2,000 of activity for the statement period.

12 b. The committee filed an electronic (or paper) statement or report timely for the same
13 period.

14 c. The committee meets the requirements for administrative termination.

15 d. No late statement or report, other than a Form 470, was due prior to a relevant election
16 and not filed at least seven days before the election.

17 (ii) Exclusions from the Streamline Program include:

18 a. For all committees, participation in the Streamline Program is limited based on the
19 population of the jurisdiction of the committee, or for special districts, the population within the
20 boundaries of the district. The population numbers are based on the U.S. Census. Special districts
21 will be asked to supply the population information based on the U.S. Census. Candidates,
22 committees, treasurers or principal officers will be excluded from participating in the Streamline
23 Program if their district does not provide population numbers. For at large elections, use the

entire population of the jurisdiction. For jurisdictions with districts, take the total population of the jurisdiction and divide by the number of districts. The campaign statement or report at issue was required to report contributions or expenditures totaling not more than:

1. \$4,000, for populations at or under 10,000;

2. \$5,700, for populations between 10,001 – 25,000;

3. \$8,200, for populations between 25,001 – 62,500;

4. \$11,700, for populations between 62,501 – 156,250;

5. \$16,700, for populations between 156,251 – 390,625;

6. \$23,900, for populations between 390,626 – 976,562;

7. \$34,200, for populations between 976,563 – 2,441,406;

8. \$48,900, for populations between 2,441,407 – 6,103,515;

9. \$69,900, for populations between 6,103,516 – 15,258,789;

10. \$100,000, for populations above 15,258,790.

b. Pattern of campaign statements or reports not timely filed.

c. A 24-Hour Report due during the last 16 days before the election and not filed at least seven days before the election.

d. Any 24-Hour Report not filed before the election if the information was not reported on another report or statement filed by the committee at least seven days before the election.

e. The late filed report was filed more than five business days after it was due and the contribution resulted in a change to the disclosure of the committees' top contributors, as required by Section 84503.

(C) Lobbying Reports Required under Chapter 6 of the Political Reform Act - Considerations and Factors.

1 (i) Considerations for a Warning Letter include:

2 a. The lobbyist is a placement agent not active in the state.

3 b. The lobbyist provided the report to the employer or firm who did not file the report.

4 c. The total required activity to be reported for that reporting period was less than \$5,000.

5 d. No history of not timely filing reports.

6 e. The filer was ill or other extenuating circumstances.

7 (ii) Exclusions from the Streamline Program include:

8 a. The total required activity to be reported for that reporting period is greater than
9 \$100,000.

10 b. The filer tried to conceal lobbying activity.

11 c. An individual lobbied without registering.

12 d. Multiple reports not timely filed.

13 e. There was a large amount of activity not disclosed in connection with legislative or
14 administrative actions actively lobbied during the period.

15 f. The undisclosed activity included campaign contributions.

16 (2) Unreported Economic Interest(s) on a Statement of Economic Interests.

17 (A) Eligibility Requirements: File an amended Statement of Economic Interests with the
18 appropriate agency disclosing the previously undisclosed economic interest.

19 (B) Considerations and Factors.

20 (i) Considerations for a Warning Letter include:

21 a. Information regarding the economic interest was reported elsewhere on the statement.

22 b. The aggregate value of the gift(s) or income received from the economic interest was
23 minimal (i.e., less than \$500).

1 c. The filer has not performed the duties of the office/position for a significant period of
2 time due to illness or otherwise.

3 (ii) Exclusions from the Streamline Program include:

4 a. The undisclosed gift(s) or income received from a source that was regulated by or had
5 business before the filer's agency.

6 b. The undisclosed gift(s) or income caused a conflict of interest violation under Sections
7 1090 or 87100.

8 (3) Unreported Lobbying Activity, Contributions or Expenditures.

9 (A) Eligibility Requirements: File an amended campaign statement or report that includes
10 all required information including contributions received, expenditures made or other activity.

11 (B) Considerations and Factors.

12 (i) Considerations for a Warning Letter include:

13 a. The committee or person had less than \$2,000 of activity not reported.

14 b. The activity was reported prior to any relevant election on a different statement or
15 report.

16 c. The committee meets the requirements for administrative termination.

17 d. The late reporting was due to illness or incapacity of the individual responsible for the
18 filing.

19 (ii) Exclusions from the Streamline Program include:

20 a. Campaign Reporting: The total amount unreported was more than 20% of the total
21 contributions or expenditures for the committee for the reporting period or the total amount
22 unreported is greater than the applicable population-based limit per reporting period on the
23 committee otherwise found in this regulation.

1 b. Lobbying Reporting: The total required activity to be reported for that reporting period
2 is greater than 20% of the activity not to exceed \$100,000.

3 (4) Cash Contribution(s) or Expenditure(s) of \$100 or More. Cash means legal tender and
4 cashier's checks or similar instruments not drawn on the contributor's account and that does not
5 include the name of the contributor on its face.

6 (A) Eligibility Requirements: Refund to the source of the contribution or the State of
7 California General Fund, if the source of a contribution cannot be determined. Disclose the
8 source of the contribution(s) or recipient(s) of the expenditure(s) on the appropriate campaign
9 statement(s) or report(s).

10 (B) Considerations and Factors.

11 (i) Considerations for a Warning Letter include:

12 a. The amount received or spent is less than \$500.

13 (ii) Exclusions from the Streamline Program include:

14 a. Failure to timely disclose the cash contribution(s) or expenditure(s) on campaign
15 statement(s) or report(s).

16 b. The percentage of cash contributions and expenditures of \$100 or more exceeds 25%
17 of total campaign contributions and expenditures of the committee for the reporting period.

18 c. The total amount of cash contributions and expenditures for the reporting period
19 exceeds \$10,000.

20 d. The person made personal use of campaign funds.

21 e. The campaign records were insufficient to determine if use of cash concealed other
22 violations.

23 (5) Campaign Bank Account.

1 (A) Eligibility Requirements: Disclose the contribution(s) or expenditure(s) on the
2 appropriate campaign statement(s) or report(s).

3 (B) Considerations and Factors.

4 (i) Considerations for a Warning Letter include:

5 a. Disclosure of the contribution(s) or expenditure(s) was reported timely on the correct
6 campaign statement or report of the committee.

7 b. The candidate or his or her wholly owned business is the source of 50% or more of the
8 committee funds for the election.

9 c. Reimbursement, if any, occurred within the time periods prescribed by the Act and
10 regulations.

11 d. The activity was isolated to the beginning of the campaign.

12 (ii) Exclusions from the Streamline Program include:

13 a. The total amount of all contributions not deposited in a campaign bank account during
14 the statement period exceeds 10% of the total contributions received for that period or the total
15 amount exceeds \$10,000.

16 b. The total amount of all campaign expenditures not from the campaign bank account
17 during the statement period exceeds 10% of the total amount of all campaign expenditures for
18 that period or the total amount exceeds \$10,000.

19 c. The person made personal use of campaign funds.

20 d. The campaign records were insufficient to determine if use of another account
21 concealed other violations.

22 (6) Committee Naming.

1 (A) Eligibility Requirements: Committee name must be amended to comply with
2 committee naming requirements.

3 (B) Consideration and Factors.

4 (i) Considerations for a Warning Letter include:

5 a. Name included essentially all required elements and was not misleading.

6 (ii) Exclusions because of Aggravating Circumstances include:

7 a. Name was misleading or ambiguous.

8 b. Incorrect name caused advertisements to be incorrect.

9 c. Incorrect name failed to disclose a major contributor, major donor, or sponsor.

10 d. The committee had activity over \$10,000 for the reporting period during which the
11 committee name was incorrect.

12 (7) Advertising and Mass Mailing Disclosures.

13 (A) Eligibility Requirements: Correction of the advertisement or mass mailing, if
14 feasible, was done.

15 (B) Considerations and Factors.

16 (i) Exclusions from the Streamline Program include:

17 a. The violation is likely to result in confusion regarding the identity of the candidate or
18 committee responsible for the advertisement, or a top contributor, sponsor, controlling candidate,
19 or ballot measure supported or opposed.

20 b. The advertisement or mass mailing contains more than two missing or incorrect
21 disclosures or display requirements in the disclaimer and one or more of the missing or incorrect
22 disclosures is: (1) paid for by requirement, (2) top contributor information, or (3) the statement
23 that the advertisement was not authorized by a candidate or committee controlled by a candidate.

1 (ii) Examples of minor violations that may qualify for a streamline penalty include the
2 following:

3 a. Failure to include “paid for by” in the same manner and immediately adjacent to a
4 committee name;

5 b. Disclosures in a font type, color, position, or size that does not comply with a
6 requirement but is as legible as the requirement.

7 c. Disclosures that include a committee name that does not match the name as stated in
8 the statement of organization but clearly identifies the source of the advertisement;

9 d. Failure to include a street address but other identifying information, such as a website
10 address, is included;

11 e. Failure to list top contributors in proper order but they are all included;

12 f. Required size or time length of disclosure is not correct, but the disclaimer is
13 identifiable, and the remainder of the disclosure is correct;

14 g. Failure to use the precise disclaimer language but the remainder of the disclosure is
15 correct.

16 (8) Recordkeeping (as required by Section 84104 and Regulation 18401).

17 (A) Considerations and Factors.

18 (i) Considerations for a Warning Letter include:

19 a. The missing records do not rise to the level to be considered a material violation.

20 (ii) Exclusions from the Streamline Program include:

21 a. The lack of recordkeeping inhibited audit efforts.

22 b. The lack of recordkeeping made it impracticable to determine if a person substantially
23 complied with the Act’s campaign reporting requirements.

1 c. The lack of recordkeeping may have blocked discovery of other violations.

2 (9) Gift limit (contained within Sections 86203 or 89503).

3 (A) Eligibility: If a person receives a gift over the limits, they must return the gift or
4 reimburse the giver for the difference between the gift's fair market value and the applicable gift
5 limit.

6 (B) Considerations and Factors.

7 (i) Considerations for a Warning Letter include:

8 a. No evidence that governmental decisions were made or effected regarding the gift
9 giver by the recipient.

10 (ii) Exclusions from the Streamline Program include:

11 a. The gift giver is a named party in, or the subject of, a governmental decision before the
12 gift recipient or the gift recipient's agency.

13 b. Failure to report the gift on a Statement of Economic Interests, if required.

14 c. The fair market value of the gift is more than \$200 over the gift limit.

15 (10) Slate Mailer Organization Campaign Filings. Slate Mailer Organizations only
16 qualify for possible participation in the Commission's Streamline Program if they have also filed
17 timely campaign statements and reports as a committee under the Act disclosing essentially all of
18 the information required to be reported by the late filed slate mailer organization campaign
19 statements and reports.

20 (11) Proper Recusal of a Conflict of Interest. An individual may qualify to participate in
21 the Commission's Streamline Program if the individual identified a potential conflict of interest
22 regarding the governmental decision and recused his or herself but failed to either:

1 (A) Publicly identify the financial interest that gives rise to the conflict of interest or
2 potential conflict of interest in detail sufficient to be understood by the public as detailed in
3 Regulation 18707, subdivision (a), or

4 (B) Properly leave the room until after the discussion, vote, and any other disposition of
5 the matter is concluded.

6 (12) Major Donor Notification. An individual or committee may qualify for participation
7 in the Commission's Streamline Program if they failed to timely send out major donor
8 notifications required by Section 84105.

9 (A) Considerations and Factors.

10 (i) Considerations for a Warning Letter include:

11 a. The committee has been in existence less than one year.

12 b. The individual or committee has not previously been required to send out the major
13 donor notification.

14 c. All persons who would have received the notifications timely filed as Major Donors, if
15 required.

16 Note: Authority cited: Section 83112, Government Code. Reference: Sections 1090, 84104,
17 87100, Government Code.